

REMARKS

In item number 3 on page 2 of the Office Action, claims 25-34 were rejected under the judicially-created doctrine of obviousness-type double patenting over the claims of U.S. Pat. No. 5,182,208.

The rejection is traversed for the following reasons.

Throughout the prosecution in the predecessor applications from which benefit is claimed for the instant application, including the first-filed application in the family, claims directed to a method of making a yeast with enhanced astaxanthin content and a yeast with enhanced astaxanthin content were presented.

All of the Restriction Requirements in the family separated the method of making claims from yeast claims.

The instant claims thus are such yeast claims, were divided in response to a Restriction Requirement and, accordingly, are subject to 35 U.S.C. 121.

Hence, the obviousness-type double patenting rejection is improper and must be withdrawn.

CONCLUSION

The claims are in condition for allowance and early indication thereof is requested respectfully.

Respectfully submitted,

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